a car," whereupon plaintiff took hold of the crank, and the demonstrator told him "to push it in and turn it." Plaintiff turned the crank as instructed, and the force of the engine released the crank from plaintiff's hand and whirled it in such a manner as to break his arm. *Held,* that plaintiff in cranking car was not a mere licensee or volunteer, but an invitee, acting by the implied invitation of the demonstrator, who, knowing plaintiff's inexperience, was negligent in failing to warn him of the danger, for which negligence defendant was liable. *Martin* v. *Maxwell-Brisco Motor Vehicle Co.* (Mo. 1911), 138 S. W. 65.

To the plaintiff in the capacity of an invitee, the defendant or his agent owed the duty of ordinary care and reasonable diligence. *Indemaur* v. *Dames,* L. R. 1 C. P. 274, 288; *Nash* v. *Minneapolis M. Co.,* 24 Minn. 501, 31 Am. Rep. 349; and when entrance upon dangerous ground or the use of a dangerous article or machine is involved in the invitation, care commensurate with the danger, including the obligation to warn the invitee, is imposed on the owner or occupier. *Huset* v. *J. I. Case Threshing Machine Co.,* 120 Fed. 865, 61 L. R. A. 303; *Lewis* v. *Terry,* 111 Cal. 39, 43 Pac. 398, 31 L. R. A. 220. Although the automobile as such now is considered not a dangerous machine, *Steffen* v. *McNaughton,* 142 Wis. 49, 124 N. W. 1016; *McIntyre* v. *Orner,* 166 Ind. 57, 76 N. E. 750, 4 L. R. A. (N. S.) 1130; HUDDY, AUTOMOBILES, Ed. 2, p. 33; and not in the same category as locomotives, dynamite, and similar dangerous agencies, *Jones* v. *Hoge,* 47 Wash. 663, 92 Pac. 433, 14 L. R. A. (N. S.) 216, 125 Am. St. Rep. 915; nor in the same class as "bad dogs, vicious bulls, evil-disposed mules and the like," *Lewis* v. *Amorous,* 3 Ga. App. 50, 59 S. E. 338; *Vincent* v. *Crandall & Godley Co.,* 115 N. Y. Supp. 600; *Berman* v. *Schultz,* 81 N. Y. Supp. 647; yet it is obvious that a part of a motor vehicle, under certain circumstances, may become a dangerous instrument. But conceding that the plaintiff was an invitee, and the auto-crank potentially dangerous, a point of view different from that taken by the Missouri court seems at least not unreasonable. For the fact that a man is an invitee does not relieve him from the duty of exercising ordinary care to protect himself from obvious dangers, *Holwerson* v. *St. Louis & S. Ry. Co.,* 157 Mo. 216, 57 S. W. 770, 50 L. R. A. 850; and notice or warning of the dangerous character of an article is not necessary when the article is not new or unknown. *Gibson* v. *Torbet,* 115 Ia. 163, 88 N. W. 443, 56 L. R. A. 98, 91 Am. St. Rep. 147, following the latter rule, held a druggist who sold a customer phosphorus upon request for that article, without special warning of its perilous qualities, not liable for injuries to the customer resulting from its careless use. If the argument of that case be applied, and the general public be deemed conversant with the nature of phosphorus, it seems possible that, in legal contemplation, a man of intelligence, probably well acquainted with modern progress, might be held to such knowledge of an instrument so common as an auto-crank, that the lack of special warning of its dangerous possibilities would not be presumed actionable negligence.

OFFICERS—DE FACTO OFFICERS—SALARY.—Petitioners were appointed rural policemen for Greenwood county by the Governor under authority conferred

by Act Feb. 18, 1911, but without the recommendation of the legislative delegation of Greenwood county as required by that act. Petitioners were commissioned, took oath, gave bond, and in good faith discharged the duties of the office for two months. *Held,* that petitioners were officers *de facto,* had in good faith with *prima facie* evidence of right performed the duties, and, in absence of any other appointment or persons entitled to and claiming the office, were entitled to recover the salary thereof. *Elledge* v. *Wharton* (S. C. 1911) 71 S. E. 657.

There are many American decisions in which the view derived from England is still adhered to, namely, that the right to the emoluments of a public office is an incident to and rests upon the legal title to the office, and hence that a *de facto* officer cannot maintain an action for salary as title to the office is thereby put in issue. *Romero* v. *United States,* 24 Ct. Cl. 331; *Phelon* v. *Granville,* 140 Mass. 386; *Christian* v. *Gibbs,* 53 Miss. 314; *Mathews* v. *Copiah County,* 53 Miss. 715, 24 Am. Rep. 715; *Morton* v. *Tieman,* 30 Barb. 193; *Dolliver* v. *Parks,* 136 Mass. 499; *Dolan* v. *New York,* 68 N. Y. 274, 23 Am. Rep. 168. The rule is sometimes stated that compensation is incident to title to office and not to the occupation and exercise of the duties thereof, and that therefore no recovery can be had for the discharge of the duties of an office by a *de facto* officer. *Pack* v. *United States,* 41 Ct. Cl. 414; *Dorsey* v. *Smyth,* 28 Cal. 21; *Stratton* v. *Oulton,* 28 Cal. 44; *Meagher* v. *Storey County,* 5 Nev. 244; *Bowman* v. *Slifer,* 25 Pa. 23; *Kimball* v. *Alcorn,* 45 Miss. 151; *People* v. *Green,* 5 Daly 254; *Egan* v. *Schram,* 82 Minn. 420; *Burke* v. *Edgar,* 67 Cal. 182. On the other hand, there is a tendency to consider offices as analogous to contracts of employment, an officer as a servant of the people and the right to the emoluments as arising out of the actual rendition of the services required to be performed, that is, the emoluments are designed to be merely compensatory. *Stuhr* v. *Curran,* 44 N. J. L. 184; *Erwin* v. *Jersey City,* 60 N. J. L. 141, 64 Am. St. Rep. 584; *Smith* v. *Mayor of New York,* 37 N. Y. 518; *Gorman* v. *Commissioners,* 1 Idaho 655. Some courts in support of the principal case have adopted an intermediate course, and while recognizing the general rule that a *de facto* officer cannot recover, and as between a *de jure* and a *de facto* officer the former is entitled to whatever salary attaches to the office, though the latter may have performed the duties, yet make an exception where there is no *de jure* claimant, and allow the officer *de facto,* who in good faith has had possession of and performed the duties, to recover the compensation attached to such office. *Erwin* v. *Jersey City,* 60 N. J. L. 141; *Dickerson* v. *Butler,* 27 Mo. App. 9; *Behan* v. *Davis,* 3 Ariz. 399, 31 Pac. 521; *Adams* v. *Insane Asylum,* 4 Ariz. 327, 40 Pac. 185; *Cousins* v. *Manchester,* 67 N. H. 229, 38 Atl. 724; *Blackburn* v. *Oklahoma City,* 1 Okla. 292, 296, 31 Pac. 782; *Henderson* v. *Glynn,* 2 Colo. App. 302; *Gorman* v. *Boise County,* 1 Idaho 655; *Peterson* v. *Benson* (Utah), 112 Pac. 801. *Contra*: *Eubank* v. *Montgomery County,* 127 Ky. 261, 128 Am. St. Rep. 340. The doctrine which gives validity to acts of officers *de facto* as regards the public and third persons should not be carried too far or be applied unless public policy demands, and public interest does not require that officers acting without authority should reap benefits from their position. To allow the *de facto* officer the right to sue for

the emoluments of office abolishes the last distinction between officers *de facto* and *de jure,* and would tend to encourage rather than discourage usurpation of offices. Right to salary is not based on performance of duties, but is created by statute and attaches to the true and not to the mere colorable title. It is not a property right and courts should not attempt to aid an intruder. The New Jersey cases are open to these objections, and the principal case, while open to some of them and contrary to the weight of authority, seeks to establish an equitable rule. "Hard cases make bad law." It is the duty of the legislature and not of the court to compensate those unfortunates who in good faith have rendered vaulable services as officers *de facto.*

PARTNERSHIP—RIGHT OF SURVIVING PARTNER TO COMPENSATION.—The firm of Harrah & Fellows, a trading partnership was dissolved by the death of Fellows on the 18th day of November, 1901, and under order of the court, Harrah continued to carry on the business until the sale of the store on the 26th day of May, 1903. He realized a gross profit of over $6,000.00 for the 18 months that he conducted the business, and claimed a credit of $1,500.00 for his services during that time in addition to his pro rata share in the profits. *Held,* this was a reasonable charge, and plaintiff was entitled to a credit of the amount claimed as compensation for his services in conducting the business and winding up the affairs of the firm. *Harrah* v. *Dyer* (Ind. App. 1911) 96 N. E. 41.

The general rule is, as announced in this case, that a surviving partner is not ordinarily entitled to compensation for personal services rendered by him in winding up the affairs of the partnership, where the same has been dissolved by the death of one of its members: *Beatty,* v. *Wray,* 19 Pa. St. 516, 57 Am. Dec. 677; *Griggs* v. *Clark,* 23 Cal. 427; *Schenkl* v. *Dana,* 118 Mass. 236; *Tillotson* v. *Tillotson,* 34 Conn. 335; *Washburn* v. *Goodman,* 17 Pick. 519; *Berry* v. *Jones,* 11 Heisk. 206, 27 Am. St. Rep. 742; *Burden* v. *Burden,* 1 Ves. & B. 170. *Contra*: *Royster* v. *Johnson,* 73 N. C. 474. The principal case, however, falls under a well recognized exception to the general rule to the effect that where the surviving partner expends his time and labor in the care and management of the partnership property, by which its value is greatly enhanced, he should receive compensation for the same, to be deducted from the increased value of the property. Such services must consist in something more than the mere winding up of the partnership business, and may be, as in the principal case, the continuing of the partnership business for some time after its dissolution: *Brown* v. *DeTastet,* Jacob 284; *Griggs* v. *Clark,* 23 Cal. 427; *Schenkl* v. *Dana,* 118 Mass. 237; *Hite* v. *Hite,* 1 B. Mon. (Ky.) 177; *Condon* v. *Callahan,* 115 Tenn. 285, 89 S. W. 400, 1 L. R. A. (N. S.) 643, 112 Am. St. Rep. 833. Extraordinary or unusual services have been compensated by the courts on the theory of an implied contract: *Maynard* v. *Richards,* 166 Ill. 466, 46 N. E. 1138, 57 Am. St. Rep. 145. Compensation has also been allowed on the theory that those who seek equity must accord it, and that profits due to such services are not due to the property: *Rowell* v. *Rowell,* 122 Wis. 1, 99 N. W. 473. Accordingly where no profits were realized, remuneration was denied: *Re Aldridge,* 2 Ch. 97. But the tendency of the courts is to